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PROTOCOL AMENDING TAX CONVENTION WITH THE NETHERLANDS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (INCLUDING EXCHANGE OF NOTES WITH ATTACHED UNDERSTANDING), SIGNED AT WASHINGTON ON MARCH 8, 2004 (THE "PROTOCOL").

JULY 16, 2004.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 16, 2004.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification, the Protocol Amending the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington, DC., on March 8, 2004. Transmitted for the Senate's information is an exchange of notes with an attached Understanding, which provides clarification with respect to the application of the Convention, as amended, in specific cases. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol would bring the existing Convention into closer conformity with current U.S. tax treaty policy. As modified by the Protocol, the Convention would be similar to tax treaties between the United States and other developed nations. The Protocol was concluded in recognition of the importance of the United States' economic relations with the Netherlands.

The Protocol would modify the treatment of certain cross-border dividend payments and would modernize the Convention's anti-treaty-shopping provisions. The Protocol also would liberalize provisions in the existing Convention regarding the mutual recognition of each country's pension plans. Other provisions in the Protocol update the Convention to take account of changes in law in the two countries over the last 10 years. The exchange of notes with an attached Understanding provides guidance to taxpayers and each government regarding the intended interpretation of certain provisions of the existing Convention, as amended.

I recommend that the Senate give early and favorable consideration to this Protocol, and that the Senate give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
May 24, 2004.

The PRESIDENT,
The White House.

MR. PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Protocol Amending the Convention Between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on March 8, 2004 (the "Protocol"). Also enclosed for the information of the Senate is an exchange of notes with an attached Understanding, which provides clarification with respect to the application of the Convention, as amended, in specified cases.

The proposed Protocol was negotiated to bring the existing Convention, concluded in 1992, into closer conformity with current U.S. tax treaty policy. The proposed Protocol was concluded in recognition of the importance of the United States' economic relations with the Netherlands.

Article 3 of the proposed Protocol, which modifies Article 10 of the Convention, provides for the elimination of withholding taxes on certain types of cross-border direct dividends. Under the existing Convention, dividends may be taxed by the country of source at a maximum rate of 5 percent on direct dividends (where the recipient of the dividends owns at least 10 percent of the company paying the dividends) and 15 percent on all other dividends. Pursuant to the proposed Protocol, the withholding tax will be eliminated entirely with respect to dividends from certain 80-percent owned corporate subsidiaries. The other rules will, however, remain in place with respect to those dividends that do not quality for this elimination.

The dividends article of the proposed Protocol also updates the provisions applicable to dividends paid by U.S. Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to make them consistent with current U.S. treaty policy. The new provision reflects a change in approach adopted in 1997, which is intended to prevent the use of structures designed to avoid U.S. withholding taxes on outbound dividends while providing appropriate benefits to portfolio investors in RICs and REITs.

Article 7 of the proposed Protocol includes a revised "Limitation on Benefits" provision, which is designed to deny "treaty-shoppers" the benefits of the Convention. The new provision corresponds more closely to those in recent U.S. treaties than did the provision in the existing Convention.

The existing Convention preserves the U.S. right to tax former citizens whose loss of citizenship had, as one of its principal purposes, the avoidance of tax. In order to take account of section 877 of the Internal Revenue Code as amended in 1996, Article 6 of the proposed Protocol expands this right to include taxation of former long-term residents whose loss of such status had, as one of its principal purposes, the avoidance of tax.

Article 5 of the proposed Protocol includes provisions intended to coordinate the two countries' rules regarding earnings and accretions of pension plans and cross-border contributions to pension plans. In addition, the proposed Protocol extends certain benefits regarding cross-border pension contributions that exist in the current treaty to U.S. citizens residing in the Netherlands who contribute to Netherlands pension plans.

The exchange of notes with an attached Understanding accompanying the proposed Protocol provides additional explanations and guidance regarding the agreed interpretation of the Convention, as amended.

The United States and the Netherlands will notify each other when their respective constitutional requirements for entry into force of the proposed Protocol have been satisfied. The proposed Protocol will enter into force on the date of the later of such notifications. It will have effect, with respect to taxes withheld at source, on the first day of the second month next following the date of entry into force. With respect to other types of taxes it will have effect for taxable periods beginning on or after January 1 of the year following the date of entry into force.

The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol. It has the full approval of both Departments.

Respectfully submitted,

COLIN L. POWELL.

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Kingdom of the Netherlands, desiring to amend the Convention between the United States of America and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on December 18, 1992, as amended by a protocol signed at Washington on October 13, 1993 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Article 1 (General Scope) of the Convention is amended by adding the following paragraph:

"3. a) Notwithstanding the provisions of subparagraph 2 b):

i) any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention shall be determined exclusively in accordance with the provisions of Article 29 (Mutual Agreement Procedure) of this Convention; and

ii) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 28 (Non-Discrimination) of this Convention.

b) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action."

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ARTICLE 2

Article 4 (Resident) is amended by omitting the last sentence of paragraph 1 and substituting the following sentence:

"However, the term "resident of one of the States" does not include any person who is liable to tax in that State in respect only of income from sources in that State."

ARTICLE 3

(a) Article 10 (Dividends) of the Convention is omitted and the following Article is substituted:

"Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the voting power in the company paying the dividends; and

b) 15 percent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the State of which the company paying the dividends is a resident if the person who is the

beneficial owner of the dividends is a company that is a resident of the other State that has owned directly shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date the dividend is declared and:

a) owned, directly or indirectly, shares representing at least 80 percent of the voting power in the company paying the dividends prior to October 1st, 1998;

b) is a qualified person by reason of subparagraph c) of paragraph 2 of Article 26 (Limitation on Benefits);

c) is entitled to benefits with respect to the dividends under paragraph 3 of Article 26; or

d) has received a determination pursuant to paragraph 7 of Article 26 with respect to this paragraph.

4. a) Subparagraph a) of paragraph 2 and paragraph 3 shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) or in the case of dividends paid by a Dutch company that is a "beleggingsinstelling" in the sense of Article 28 of the Netherlands Corporation Tax Act (Wet op de vennootschapsbelasting 1969) (hereinafter referred to as "beleggingsinstelling").

b) In the case of dividends paid by a RIC or a beleggingsinstelling, subparagraph b) of paragraph 2 shall apply.

c) In the case of dividends paid by a REIT or, notwithstanding subparagraph b) of this paragraph 4, by a beleggingsinstelling that invests in real estate to the same extent as is required of a REIT, subparagraph b) of paragraph 2 shall apply only if:

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i) the beneficial owner of the dividends is an individual holding an interest of not more than 25 percent in the REIT or beleggingsinstelling;

ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends holds an interest of not more than 5 percent of any class of the stock of the REIT or beleggingsinstelling;

iii) the beneficial owner of the dividends holds an interest of not more than 10 percent in the REIT or beleggingsinstelling and the gross value of no single interest in real property held by the REIT or beleggingsinstelling exceeds 10 percent of the gross value of the total interest in real property held by the REIT or beleggingsinstelling; or

iv) the beneficial owner is a beleggingsinstelling, in the case of dividends paid by a REIT, or a RIC or a REIT, in the case of dividends paid by a beleggingsinstelling.

5. The provisions of the preceding paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this Convention means income from shares or other rights participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. For the purposes of this paragraph, the term "dividends" also includes, in the case of the Netherlands, income from debt claims that is

subjected to the same taxation treatment as income from shares and, in the case of the United States, income from debt obligations carrying the right to participate in profits.

7. The provisions of paragraphs 1, 2, 3, and 4 of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid forms part of the business property of such permanent establishment or pertains to such fixed base. In that case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

8. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid forms part of the business property of a permanent establishment or pertains to a fixed base situated in that other State, nor, except as provided in Article 11 (Branch Tax), subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State."

(b) Article 25 (Methods of Elimination of Double Taxation) is modified by

i) omitting in the first sentence of paragraph 2 "paragraph 5 of Article10" and substituting "paragraph 7 of Article 10"; and

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ii) omitting in subparagraph 3(c) "paragraph 2(i) of Article 10" and substituting "paragraph 4 of Article 10".

ARTICLE 4

Article 11 (Branch Tax) is modified by adding at the end of paragraph 3 the following new sentence:

"Paragraph 1 shall not apply in the case of a company that:

a) prior to October 1st, 1998 was engaged in activities giving rise to profits attributable to that permanent establishment or to income or gains to which the provisions of Article 6 or, as the case may be, paragraph 1 of Article 14 apply;

b) is a qualified person by reason of subparagraph c) of paragraph 2 of Article 26 (Limitation on Benefits) of this Convention; or

c) is entitled to benefits with respect to the dividends under paragraph 3 of Article 26; or

d) has received a determination pursuant to paragraph 7 of Article 26 with respect to this paragraph."

ARTICLE 5

(a) Article 19 (Pensions, Annuities, Alimony) is amended by adding the following new paragraphs:

"7. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, an exempt pension trust that is a resident of the other State, income earned by the exempt pension trust may be taxed as income of that individual only when, and, subject to

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the provisions of paragraphs 1, 2 and 3 of this Article, to the extent that, it is paid to, or for the benefit of, that individual from the exempt pension trust (and not transferred to another exempt pension trust in that other State).

8. Where an individual who is a member or beneficiary of, or participant in, an exempt pension trust established in one of the States exercises an employment or self-employment in the other State:

a) contributions paid by or on behalf of that individual to the exempt pension trust during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and

b) any benefits accrued under the exempt pension trust, or contributions made to the exempt pension trust by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State.

The relief available under this paragraph shall not exceed the relief that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, an exempt pension trust established in that State.

9. The provisions of paragraph 8 of this Article shall not apply unless:

a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the exempt pension trust (or to another similar exempt pension trust for which the first-mentioned exempt pension trust was substituted) were made

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before the individual began to exercise an employment or self-employment in the other State; and

b) the competent authority of the other State has agreed that the exempt pension trust generally corresponds to an exempt pension trust established in that other State.

10. a) Where a citizen of the United States who is a resident of the Netherlands exercises an employment in the Netherlands the income from which is taxable in the Netherlands and is borne by an employer who is a resident of the Netherlands or by a permanent establishment situated in the Netherlands, and the individual is a member or beneficiary of, or participant in, an exempt pension trust established in the Netherlands,

i) contributions paid by or on behalf of that individual to the exempt pension trust during the period that he exercises the employment in the Netherlands, and that are attributable to the employment, shall be deductible (or excludible) in computing his taxable income in the United States; and

ii) any benefits accrued under the exempt pension trust, or contributions made to the exempt pension trust by or on behalf of the individual's employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States. This paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in the Netherlands.

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b) The relief available under this paragraph shall not exceed the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding exempt pension trust established in the United States.

c) For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to an exempt pension trust established in the United States, contributions made to, or benefits accrued under, an exempt pension trust established in the Netherlands shall be treated as contributions or benefits under a generally corresponding exempt pension trust established in the United States to the extent relief is available to the individual under this paragraph.

d) This paragraph shall not apply unless the competent authority of the United States has agreed that the exempt pension trust generally corresponds to an exempt pension trust established in the United States.

11. The benefits of paragraphs 7, 8, 9 and 10 will apply with respect to an exempt pension trust that is established in the United States only if the pension trust undertakes to provide information and to provide surety to the tax authorities of the Netherlands in accordance with the Netherlands law regarding designated foreign pension trusts."

(b) Article 28 (Non-Discrimination) is modified by omitting paragraph 5 and re-numbering paragraphs 6 and 7 as 5 and 6.

ARTICLE 6

Article 24 (Basis of Taxation) of the Convention is amended by:

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(a) inserting in the last sentence of paragraph 1 "or long-term resident" after "include a former citizen";

(b) omitting in the last sentence of paragraph 1 "United States citizenship" and substituting "such United States status";

(c) omitting in subparagraph 2 a) "paragraph 4 of Article 19" and substituting "paragraphs 4, 7, 8 and 10 of Article 19";

(d) omitting in the first sentence of paragraph 3 "paragraph 5 of Article 10" and substituting "paragraph 7 of Article 10"; and

(e) adding a new paragraph as follows:

"4. In the case of an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit or gain of a resident."

ARTICLE 7

Article 26 (Limitation on Benefits) of the Convention is omitted and the following Article is substituted:

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"Article 26

LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of one of the States that derives income from the other State shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State only if such resident is a "qualified person" as defined in paragraph 2 of this Article and satisfies any other specified conditions for the obtaining of such benefits.

2. A resident of one of the States is a qualified person for a taxable year only if such resident is either:

a) an individual;

b) a State, or a political subdivision or local authority thereof;

c) a company, if

i) the principal class of its shares (and any disproportionate class of shares) is listed on a recognized stock exchange specified in clauses i) or ii) of subparagraph a) of paragraph 8 of this Article and is regularly traded on one or more recognized stock exchanges, unless the company has no substantial presence in the State of which it is a resident; or

ii) shares representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in

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the case of indirect ownership, each intermediate owner is a resident of either State;

d) a person described in Article 35 (Exempt Pension Trusts) of this Convention, provided that:

i) more than 50 percent of the person's beneficiaries, members or participants are individuals who are residents of either State; or

ii) the organization sponsoring such person is entitled to the benefits of the Convention pursuant to this Article;

e) a not-for-profit organization not described in subparagraph d) that, by virtue of such status, is generally exempt from income taxation in its State of residence; or

f) a person, other than an individual or a company that would qualify for benefits under clause i) of subparagraph c) but for the fact that it has no substantial presence in the State of which it is a resident, if:

i) on at least half the days of the taxable year persons that are qualified persons by reason of subparagraphs a), b), clause i) of subparagraph c), or subparagraphs d) or e) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, and

ii) less than 50 percent of the person's gross income for that taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either State in the form of payments that are deductible for the purposes of

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the taxes covered by this Convention in the State of which the person is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a State such payment is attributable to a permanent establishment of that bank located in one of the States).

3. Notwithstanding that a company that is a resident of a State may not be a qualified person, it shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State with respect to an item of income if it satisfies any other specified conditions for the obtaining of such benefits and:

a) shares representing at least 95 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries; and

b) less than 50 percent of the company's gross income for the taxable year in which the item of income arises is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments that are deductible for the purposes of the taxes covered by this Convention in the State of which the company is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a State such payment is attributable to a permanent establishment of that bank located in one of the States).

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4. a) Notwithstanding that a resident of a State may not be a qualified person, it shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State with respect to an item of income derived from the other State, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the activities of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities dealing carried on by a bank, insurance company or registered securities dealer), the income derived from the other State is derived in connection with, or is incidental to, that trade or business and that resident satisfies any other specified conditions for the obtaining of such benefits.

b) If a resident of one of the States or any of its associated enterprises carries on a trade or business activity in the other State which gives rise to an item of income, subparagraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State.

c) In determining whether a person is engaged in the active conduct of a trade or business in a State under subparagraph a) of this paragraph, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, shares representing at least 50 percent of the aggregate voting power and value of the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the

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beneficial interest (or, in the case of a company, shares representing at least 50 percent of the aggregate voting power and value of the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. A person that is a resident of a State shall also be entitled to all the benefits of this Convention otherwise accorded to residents of a State if that person functions as a headquarters company for a multinational corporate group and that resident satisfies any other specified conditions for the obtaining of such benefits. A person shall be considered a headquarters company for this purpose only if:

a) it provides a substantial portion of the overall supervision and administration of the group, which may include, but cannot be principally, group financing;

b) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 percent of the gross income of the group;

c) the business activities carried on in any one country other than the State of residence of the headquarters company generate less than 50 percent of the gross income of the group;

d) no more than 25 percent of its gross income is derived from the other State;

e) it has, and exercises, independent discretionary authority to carry out the functions referred to in subparagraph a);

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f) it is subject to the same income taxation rules in its country of residence as persons described in paragraph 4; and

g) the income derived in the other State either is derived in connection with, or is incidental to, the active business referred to in subparagraph b).

If the gross income requirements of subparagraphs b), c), or d) of this paragraph are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years.

6. A person, resident of one of the States, which derives from the other State income mentioned in Article 8 (Shipping and Air Transport) and which is not entitled to the benefits of this Convention because of the foregoing paragraphs, shall nevertheless be entitled to the benefits of this Convention with respect to such income if:

a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the value of the stock of such company) is owned, directly or indirectly, by qualified persons or individuals who are residents of a third state; or

b) in the case of a company, the stock of such company is primarily and regularly traded on an established securities market in a third state, provided that such third state grants an exemption under similar terms for profits as mentioned in Article 8 of this Convention to citizens and corporations of the other State either under its national law or in common agreement with that other State or under a Convention between that third state and the other State.

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7. A person resident of one of the States, who is not entitled to some or all of the benefits of this Convention because of the foregoing paragraphs, may, nevertheless, be granted benefits of this Convention if the competent authority of the State in which the income in question arises so determines. In making such determination, the competent authority shall take into account as its guidelines whether the establishment, acquisition or maintenance of such person or the conduct of its operations has or had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the State in which the income arises will consult with the competent authority of the other State before denying benefits of the Convention under this paragraph.

8. For the purposes of this Article the following rules and definitions shall apply:

a) the term "recognized stock exchange" means:

i) the NASDAQ System and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;

ii) the Amsterdam Stock Exchange and any other stock exchange subject to regulation by the Authority for the Financial Markets (or its successor) in the Netherlands;

iii) the Irish Stock Exchange, the Swiss Stock Exchange and the stock exchanges of Brussels, Frankfurt, Hamburg, Johannesburg, London, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto and Vienna; and

iv) any other stock exchange which the competent authorities agree to

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recognize for the purposes of this Article;

b) i) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" is that class or those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

ii) the term "shares" shall include depository receipts thereof or trust certificates thereof;

c) the term "disproportionate class of shares" means any class of shares of a company resident in one of the States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company;

d) a company has no substantial presence in the State of which it is a resident if:

i) A) the aggregate volume of trading in such company's stock on recognized stock exchanges located in the other State is greater than the aggregate volume of trading in its stock on recognized stock exchanges in its primary economic zone, or

B) the company is not traded on any recognized stock exchange located in the primary economic zone of the State of which the company is a

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resident, or trading on such exchange or exchanges constitutes less than 10 percent of total worldwide trading in such company's stock; and

ii) the company's primary place of management and control is not in the State of which it is a resident;

e) in making the determinations in subparagraph d),

i) for purposes of clause i) thereof, the company may make the determination using average trading volumes for the three preceding taxable years;

ii) the primary economic zone of the Netherlands includes the member states of the European Union or the European Economic Area. The primary economic zone of the United States includes the states party to the North American Free Trade Agreement; and

iii) the company's primary place of management and control will be in the State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staffs conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

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f) an equivalent beneficiary is a resident of a member state of the European Union or of a European Economic Area state or of a party to the North American Free Trade Agreement but only if that resident:

i) A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or a European Economic Area state or any party to the North American Free Trade Agreement and the State from which the benefits of this Convention are claimed under provisions analogous to subparagraph a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be a qualified person under subparagraph a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article if such person were a resident of one of the States under Article 4 (Resident) of this Convention; and

B) with respect to income referred to in Article 10 (Dividends), 11 (Branch Tax), 12 (Interest) or 13 (Royalties) of this Convention, would be entitled under such convention to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

ii) is a resident of a State that is a qualified person by reason of subparagraph

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a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article.

For the purposes of applying paragraph 3 of Article 10 (Dividends) in order to determine whether a person, owning shares, directly or indirectly, in the company claiming the benefits of this Convention, is an equivalent beneficiary, such person shall be deemed to hold the same voting power in the company paying the dividend as the company claiming the benefits holds in such company;

g) with respect to dividends, interest or royalties arising in the Netherlands and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of subparagraph f) i) B) for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest or royalties arising in the Netherlands and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the income tax convention between the Netherlands and that other member state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10 (Dividends), 12 (Interest), or 13 (Royalties) of this Convention;

h) for the purposes of paragraph 2 of this Article, the shares in a class of shares are considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or

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exchanges during the twelve months ending on the day before the beginning of that taxable year is at least six percent of the average number of shares outstanding in that class during that twelve-month period."

ARTICLE 8

Article 32 (Limitation of Articles 30 and 31) is omitted and the following Article is substituted:

"Article 32

LIMITATION OF ARTICLES 30 AND 31

1. In no case shall the provisions of Articles 30 (Exchange of Information and Administrative Assistance) and 31 (Assistance and Support in Collection) be construed so as to impose on one of the States the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

2. Notwithstanding paragraph 1, the competent authority of each State shall have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity or information about persons holding interests,

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including bearer shares, in another person, regardless of any laws or practices of the State that might otherwise preclude the obtaining of such information.

3. The provisions of this Convention shall not impose on a State the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

a) produced for the purposes of seeking or providing legal advice; or

b) produced for the purposes of use in existing or contemplated legal proceedings."

ARTICLE 9

(a) Article 2 (Taxes Covered) is modified by omitting "the Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continentaal Plat 1965) hereinafter referred to as 'profit share'" in the first paragraph and substituting "the Mining Act (Mijnbouwwet) hereinafter referred to as 'profit share'".

(b) Article 18 (Artistes and Athletes) is modified by omitting "Netherlands guilders" in the first paragraph and substituting "euro".

(c) Article 22 (Students and Trainees) is modified by omitting "Netherlands guilders" and substituting "euro" in subparagraph 1 b) ii) and subparagraph 2 b).

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ARTICLE 10

1. This Protocol shall enter into force on the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force, and

b) in respect of other taxes, for taxable periods beginning on or after the first day of January in the year following the date of entry into force of the Protocol.

2. Notwithstanding paragraph 1, where any person entitled to benefits under the Convention as unmodified by this Protocol would have been entitled to greater benefits thereunder than under the Convention as modified by this Protocol, the Convention as unmodified shall, at the election of such person, continue to have effect in its entirety with respect to such person for a twelve-month period from the date on which the provisions of this Protocol would have effect under paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Washington, this 8th day of March, 2004, in the English and Netherlands languages, the two texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS:

March 8, 2004

Excellency:

I have the honor to refer to the Protocol signed today between the United States of America and the Kingdom of the Netherlands Amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Protocol signed today, the negotiators developed and agreed upon the Understanding that is attached to this note. The Understanding is a statement of intent setting forth a common understanding and

His Excellency

Boudewijn van Eenennaam,

Ambassador of the Kingdom of the Netherlands.

interpretation of certain provisions of the Protocol reached by the delegations of the United States and the Kingdom of the Netherlands on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting these provisions. It was further decided that this Understanding will supersede the Understanding accompanying the 1992 Convention and the related exchange of notes accompanying the 1993 Protocol.

If the understandings and interpretations in the Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration.

For the Secretary of State:

Attachment:

As stated.

March 8, 2004

Mr. Secretary:

I have the honor to confirm receipt of your Note of today's date which reads as follows:

"I have the honor to refer to the Protocol signed today between the United States of America and the Kingdom of the Netherlands Amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Protocol signed today, the negotiators developed and agreed upon the Understanding that is attached to this note. The Understanding is a statement of intent setting forth a common understanding and interpretation of certain provisions of the Protocol reached by the delegations of the United States and the Kingdom of the Netherlands on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in

interpreting these provisions. It was further decided that this Understanding will supersede the Understanding accompanying the 1992 Convention and the related exchange of notes accompanying the 1993 Protocol.

If the understandings and interpretations in the Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration."

I have the honor to inform you, that my Government agrees to the above.

Accept, Your Excellency, the expression of my highest consideration.

UNDERSTANDING REGARDING THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED ON DECEMBER 18, 1992 AND AMENDED BY PROTOCOLS SIGNED ON OCTOBER 13, 1993 AND MARCH 8, 2004

I. In reference to paragraph 1 of Article 4 (Resident)

(a) It is understood that for purposes of the Convention, the Government of one of the States, its political subdivisions or local authorities are to be considered as residents of that State.

(b) It is understood that a company that is or would be a resident of a State pursuant to that State's domestic law will not be treated as a resident of that State for purposes of the Convention if it is treated as a resident of a third state pursuant to an income tax convention between that State and the third state.

II. In reference to paragraph 4 of Article 4 (Resident)

It is understood that, if a company is a resident of the Netherlands under paragraph 1 of Article 4 (Resident) and, because of the application of Section 269B of the Internal Revenue Code, such company is also a resident of the United States under paragraph 1 of Article 4, the question of its residency for the purposes of the application of this Convention shall be subject to a mutual agreement procedure as laid down in paragraph 4 of Article 4.

III. In reference to Article 7 (Business Profits)

It is understood that with respect to paragraphs 1 and 2 of Article 7 (Business Profits), where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total income of the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such business. Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined on the basis only of that part of the contract that is effectively carried out by the permanent establishment. The profits related to that part of the contract that is carried out by the head office of the enterprise shall not be taxable in the State in which the permanent establishment is situated.

IV. In reference to Article 9 (Associated Enterprises), Article 12 (Interest) and Article 29 (Mutual Agreement Procedure)

Nothing in paragraph 1 of Article 9 (Associated Enterprises) or paragraph 5 of Article 12 (Interest) shall prevent either State from determining the appropriate amount of interest deduction of an enterprise not only by reference to the amount of interest with respect to any particular debt-claim but also by reference to the overall amount of debt capital of the enterprise. In the context of a mutual agreement procedure under Article 29 (Mutual Agreement Procedure), the amount of the interest deduction shall be determined in a manner consistent with the principles of paragraph 1 of Article 9, by reference to conditions in commercial or financial relations which prevail between independent enterprises dealing at arm's length. Those principles are more fully examined and explained in OECD publications regarding "thin capitalization".

V. In reference to Article 9 (Associated Enterprises) and Article 29 (Mutual Agreement Procedure)

In accordance with paragraph 3 of Article 29 (Mutual Agreement Procedure) the competent authorities shall endeavor to resolve by mutual agreement any case of double taxation arising by reason of an allocation of income, deductions, credits or allowances caused by the application of internal law regarding thin capitalization, earnings stripping, or transfer pricing, or other provisions potentially giving rise to double taxation. In this mutual agreement procedure, the proper allocation of income, deductions, credits or allowances under the Convention will be determined in a manner consistent with the principles of paragraph 1 of Article 9 (Associated Enterprises) by reference to conditions in commercial or financial relations that prevail between independent enterprises dealing at arm's length. Consistent with the mutual agreement procedures of other income tax conventions, including those entered by both States, a procedure under Article 29 concerning an adjustment in the allocation of income, deductions, credits or allowances by one of the States might result either in a correlative adjustment by the other State or in a full or partial readjustment by the first-mentioned State of its original adjustment.

VI. In reference to subparagraph 2 a) and paragraph 6 of Article 10 (Dividends)

It is understood that a beneficial owner of the dividends, who holds depository receipts or trust certificates evidencing beneficial ownership of the shares in lieu of the shares themselves in the company in question, may also claim the treaty benefits of subparagraph 2 a) of Article 10 (Dividends). In addition, it is understood that where a person loans shares (or other rights the income from which is subject to the same taxation treatment as income from shares) and receives from the borrower an obligation to pay an amount equivalent to any dividend distribution made with respect to the shares or other rights loaned during the term of such loan, such person shall be treated as the beneficial owner of the dividend paid with respect to such shares or other rights for purposes of the application of Article 10 to any such equivalent amount.

VII. In reference to Article 10 (Dividends) and subparagraph 8 b) ii) of Article 26 (Limitation on Benefits)

For the purpose of Article 10 and subparagraph 8 b) ii) of Article 26 (Limitation on Benefits), it is understood that depository receipts or trust certificates of shares will be considered to possess the rights attached to the shares which they replace, including the voting rights thereof.

VIII. In reference to paragraph 3 of Article 10 (Dividends), paragraph 3 of Article 11 (Branch Tax) and paragraph 7 of Article 26 (Limitation on Benefits)

It is understood that a resident that would qualify for benefits under subparagraph 3 a) of Article 10 (Dividends) or Article 11 (Branch Tax), but does not do so because it acquired the relevant shareholding on or after October 1st, 1998, is not prevented from requesting a determination from the competent authority pursuant to subparagraph 3 d) of that Article, so long as it also does not meet the requirements of 3 b) and 3 c).

IX. In reference to paragraph 1 of Article 14 (Capital Gains)

In determining for purposes of paragraph 1 of Article 14 (Capital Gains) whether the assets of a corporation resident in the United States consist, directly or indirectly, for the greater part of real property situated in the United States and whether the stock of such corporation is a "United States real property interest", the United States confirms that it will take into account the fair market value of all of the assets of the corporation, including intangible business assets such as goodwill, whether or not appearing as an asset on the balance sheet for tax purposes, going concern value and intellectual property.

X. In reference to paragraph 8 of Article 14 (Capital Gains)

It is understood that paragraph 8 of Article 14 (Capital Gains) shall not apply to an alienation of property by a resident of one of the States if the tax that would otherwise be imposed on such alienation by the other State cannot reasonably be imposed or collected at a later time. For example, under the domestic law of the United States, a foreign corporation that qualifies as a "United States real property holding corporation" is taxed in some circumstances if it transfers its assets to a United States corporation in a reorganization. In such a case, only if the shareholders of such foreign corporation agree to reduce basis (if and only to the extent available) by "closing agreement" can the tax that otherwise would be imposed on such alienation be reasonably imposed or collected at a later time.

XI. In reference to paragraph 4 of Article 19 (Pensions, Annuities, Alimony)

It is understood that the term "other public pensions" as used in paragraph 4 of Article 19 (Pensions, Annuities, Alimony) is intended to refer to United States tier 1 Railroad Retirement benefits.

XII. In reference to paragraphs 7, 8, 9 and 10 of Article 19 (Pensions, Annuities, Alimony)

It is understood that the term "exempt pension trust" includes those arrangements that are treated as exempt pension trusts for purposes of Article 35 (Exempt Pension Trusts).

XIII. In reference to paragraph 11 of Article 19 (Pensions, Annuities, Alimony)

It is understood that the competent authorities of both States will consult with a view to agreeing rules that will reduce the burden of the undertakings required of exempt pension trusts. Such rules will also seek to reduce the burden on the members or beneficiaries which may arise under Netherlands law.

XIV. In reference to paragraph 4 of Article 24 (Basis of Taxation)

(a) It is understood that, where, by virtue of paragraph 4 of Article 24 (Basis of Taxation) an item of income is considered by a State to be derived by a person who is a resident of that State, and the same item is considered by the other State to be derived by a person who is a resident of that other State, the paragraph shall not prevent either State from taxing the item as the income of the person considered by that State to have derived the item of income.

The following example demonstrates the application of the preceding paragraph:

Individual Z, a resident of the Netherlands, is the sole member of Y, a U.S. limited liability company (LLC). Y owns X, a U.S. corporation. Y has elected under the U.S. entity classification rules to be taxed as a U.S. corporation. Under Netherlands law, however, Y is treated, in this situation, as a fiscally transparent entity. On date A, X distributes a $100 dividend to Y. On date B, Y distributes a $100 dividend to Z. Under Netherlands law, the dividend from X to Y is considered to be derived by Z. The two States agree that, in these circumstances, the United States is not prevented from exercising full taxing jurisdiction over Y (which is treated as a U.S. corporation) and, accordingly, the United States may tax the dividends from X to Y and from Y to Z in accordance with its domestic law. However, with respect to the dividend from Y to Z, the rate of tax applicable to the dividend shall be determined in accordance with Article 10.

(b) The competent authority of a State may grant the benefits of the Convention to a resident of the other State with respect to an item of income, even though it is not treated as income of the resident under the laws of that other State, in cases where the income would have been exempt from tax if it had been treated as the income of that resident.

The following example demonstrates the application of the preceding paragraph:

Z is an exempt pension trust within the meaning of Article 35 (Exempt Pension Trusts) that is a resident of the Netherlands for purposes of the Convention. Z is a member of Y,

a U.S. limited liability company that has elected to be treated as fiscally transparent for U.S. tax purposes. Because of certain characteristics, Y is non-transparent under Netherlands law. Y owns shares in a number of U.S. companies that pay dividends currently. Under the general rule of paragraph 4 of Article 24 (Basis of Taxation), Z would not be entitled to the benefits of Article 10 (Dividends) because the income derived by Y is not treated by the Netherlands as the income of Z. However, the U.S. competent authority may determine that Z is entitled to benefits because Z would be exempt from tax on the income even if it were treated as having derived the income.

XV. In reference to Article 26 (Limitation on Benefits)

It is understood that the term "gross income" means the total revenues derived by a resident of a State from its principal operations, less the direct costs of obtaining such revenues.

XVI. In reference to subparagraph 2 f) and paragraph 3 of Article 26 (Limitation on Benefits)

It is understood that the proof a Dutch resident investment organization (a "beleggingsinstelling" in the sense of Article 28 of the "Wet op de vennootschapsbelasting 1969") has of the number of its Dutch resident individual and corporate shareholders as a result of the procedure used by such Dutch resident investment organization when claiming a reimbursement of tax withheld on its foreign dividend and interest income under paragraph 1 b) of Article 28 of the "Wet op de vennootschapsbelasting 1969", can be used by such Dutch investment organization to show that it fulfills the requirements of paragraph 2 f) and paragraph 3 respectively of Article 26 (Limitation on Benefits).

XVII. With reference to paragraphs 2 and 5 of Article 26 (Limitation on Benefits)

The competent authorities may, by mutual agreement, notwithstanding the provisions of these paragraphs, determine transition rules for newly-established business operations, newly-established corporate groups or newly-established headquarters companies.

XVIII. In reference to paragraph 3 of Article 26 (Limitation on Benefits)

The following example demonstrates an application of paragraph 3 of Article 26.

A Netherlands resident company, Y, owns all of the shares in a U.S. resident company, Z. Y is wholly owned by X, a U.K. resident company that would not qualify for all of the benefits of the U.S.-U.K. income tax treaty but may qualify for benefits with respect to certain items of income under the "active trade or business" test of the U.S.-U.K. treaty. X, in turn, is wholly owned by W, a French resident-company that is substantially and regularly traded on the Paris Stock Exchange. Z pays a dividend to Y. For purposes of this example, assume that Y does not qualify for benefits under paragraph 2 of Article 26 (Limitation on Benefits). Y does qualify for benefits under paragraph 3 of Article 26,

however, assuming that the requirements of subparagraph 3 b) of Article 26 are met. Y is directly owned by X, which is not an equivalent beneficiary within the meaning of subparagraph 8 f) of Article 26 (X does not qualify for all of the benefits of the U.S.-U.K. tax treaty). However, Y is also indirectly owned by W, which is an equivalent beneficiary for purposes of the benefits provided by paragraph 2 a) of Article 10 within the meaning of subparagraph 8 f) of Article 26 (because W is a French resident company whose shares are substantially and regularly traded on a recognized stock exchange, within the meaning of the Limitation on Benefits Article of the U.S.-France income tax treaty). Accordingly, U.S. withholding tax on the dividend from Z to Y will be imposed at a rate of 5% in accordance with subparagraph 2 a) of Article 10.

XIX. In reference to paragraph 4 of Article 26 (Limitation on Benefits)

It is understood that an item of income is to be considered as derived "in connection" with an active trade or business in a State if the activity generating the item in the other state is a line of business which forms a part of, or is complementary to, the trade or business conducted in the first-mentioned State. The line of business in the first-mentioned State may be "upstream" to that going on in the other State (e.g., providing inputs to a manufacturing process that occurs in that other State), "downstream" (e.g., selling the output of a manufacturer which is a resident of the other State) or "parallel" (e.g., selling in one State the same sorts of products that are being sold by the trade or business carried on in the other State).

It is understood that an item of income derived from a State would be considered "incidental" to the trade or business carried on in the other State if the item is not produced by a line of business which forms a part of, or is complementary to, the trade or business conducted in that other State by the recipient of the item, but the production of such item facilitates the conduct of the trade or business in that other State. An example of such "incidental" item of income is interest income earned from the short-term investment of working capital or a resident of a State in securities issued by person in the other State.

XX. In reference to subparagraph 4 a) of Article 26 (Limitation on Benefits)

It is understood that for purposes of subparagraph 4 a) of Article 26 (Limitation on Benefits), a bank only will be considered to be engaged in the active conduct of a banking business if it regularly accepts deposits from the public and makes loans to the public, and an insurance company only will be considered to be engaged in the active conduct of an insurance business if its gross income consists primarily of insurance or reinsurance premiums, and investment income attributable to such premiums.

XXI. In reference to paragraph 8 of Article 12 (Interest) and subparagraph 4(a) of Article 26 (Limitation on Benefits)

For the purpose of subparagraph 4 a) of Article 26 (Limitation on Benefits) and paragraph 8 of Article 12 (Interest) it is understood that interest derived from group

financing or portfolio investments shall be considered to be part of the business of making or managing investments.

XXII. In reference to subparagraph 4 b) of Article 26 (Limitation on Benefits)

It is understood that the substantiality requirement of subparagraph b) is intended to prevent a narrow case of treaty-shopping abuses in which a company attempts to qualify for treaty benefits by engaging in de minimis connected business activities that have little economic cost or effect with respect to the company's business as a whole.

Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. Such determination will take into account the comparative sizes of the trades or businesses in each Contracting State (measured by reference to asset values, income and payroll expenses), the nature of the activities performed in each Contracting State, and, in cases where a trade or business is conducted in both Contracting States, the relative contributions made to that trade or business in each Contracting State. In making each determination or comparison, due regard will be given to the relative sizes of the U.S. and Netherlands economies.

In any case, however, a trade or business will be deemed substantial if, for the preceding taxable year, or for the average of the three preceding taxable years, the asset value, the gross income, and the payroll expense that are related to the trade or business in the first-mentioned State equal at least 7.5 percent of the resident's (and any related parties') proportionate share of the asset value, gross income and payroll expense, respectively, that generated the income in the other State, and the average of the three ratios exceeds 10 percent. If the resident owns, directly or indirectly, less than 100 percent of an activity conducted in either State, only the resident's proportionate interest in such activity will be taken into account for purposes of the test described in this paragraph.

The following examples demonstrate the application of the substantiality requirement.

Example 1 (i) V, a resident of a country that does not have a tax treaty with the Netherlands, wants to acquire a Netherlands financial institution. However, since its country of residence does not have a tax treaty with the Netherlands, any dividends generated by the investment would be subject to a Netherlands withholding tax of 25%. V establishes a U.S. corporation with one office in a small town to provide investment advice to local residents. That U.S. corporation acquires the Netherlands financial institution with capital provided by V.

(ii) The Netherlands source income is generated from business activities in the Netherlands that are related to the investment advisory business conducted by the U.S. parent. However, the substantiality test would not be met in this example, so the dividends would remain subject to withholding in the Netherlands at a rate of 25% rather than the rate provided in Article 10 (Dividends).

Example 2 (i) S is a banking organization that is organized and managed and controlled in the Netherlands. S has a large number of local branches and customers in the Netherlands and sufficient employees to provide banking services to those customers. However, because the banking market in the Netherlands is crowded with competitors, S determined that it needed to establish branches outside the Netherlands in order to expand its business. In accordance with that plan, S established branches in several major cities in the United States to engage in the same type of banking business as in the Netherlands. Over time, the U.S. branches have grown significantly, and now are equal in size to the entire Netherlands business of S.

(ii) The business activities of the U.S. branches of S are related to the business conducted by S in the Netherlands. Because S has a large number of local branches and employees in the Netherlands, the activities of S in the Netherlands are substantial for purposes of subparagraph 4 b) of Article 26 (Limitation on Benefits).

Example 3

NLCo, a Netherlands corporation, owns 100 percent of the stock of USCo, a U.S. corporation, and 50 percent of the stock of NLSub, a Netherlands corporation. NLCo does not directly conduct an active trade or business. USCo and NLSub are actively engaged in the music business. USCo has a number of employees who are responsible for discovering new recording artists. USCo also produces recordings and is responsible for production and distribution within the United States. Employees of NLSub are responsible for promoting the recordings in the Netherlands and developing a distribution strategy for the rest of Europe. European sales of U.S. recording artists contribute substantiality to the profitability of USCo.

NLCo receives payments of interest and dividends from USCo. In order for these payments to be entitled to treaty benefits under paragraph 4 of Article 26, NLCo must be considered to be engaged in the active conduct of a trade or business in the Netherlands. Under subparagraph 4 b), because NLCo and USCo are related persons, the activities conducted in the Netherlands and attributed to NLCo must be substantial in relation to the activities conducted by USCo. NLCo will be deemed to satisfy this requirement if the ratio of the assets, income and payroll attributable to NLCo to the assets, income and payroll attributable to USCo are at least 10 percent and each ratio is at least 7.5 percent.

For each of the four most recently concluded taxable years, the asset values, gross income and payroll expenses of these corporations that are attributable to the trade or business were as follows:

	USCo	*NLSub*
Assets	$300	$50
Income	50	10
Payroll	60	10

NLCo has no assets, income or payroll that are attributable to the trade or business. The assets, income and payroll of NLSub that are related to the trade or business may be attributed to NLCo, however, under subparagraph c), since NLCo is connected to NLSub by reason of its 50% beneficial ownership in NLSub. Accordingly, 50 percent of NLSub's assets, income and payroll are attributed to NLCo. The amounts attributed to NLCo and the percentage of USCo's corresponding amounts are as follows:

	NLCo	*NLCo as a Percentage of USCo*
Assets	$25	8.3
Income	5	10.0
Payroll	5	8.3

Since none of these percentages is greater than 10 percent, NLCo does not meet the requirements for the safe harbor described above. Moreover, application of the three-year average rule does not change the result, since the relevant amounts for the three preceding years (and the resulting ratios) are equal to those for the first preceding taxable year.

Nevertheless, NLCo will still qualify for benefits with respect to dividends received from USCo. The activities performed by NLSub are substantial in relation to those of USCo, taking into account the contributions of each company to the overall business of the group.

XXIII. In reference to subparagraph 5 a) of Article 26 (Limitation on Benefits)

(a) For the purpose of subparagraph 5 a) of Article 26 (Limitation on Benefits) it is understood that the activities referred to in that subparagraph must be performed in the State of residence of the person performing such activities.

(b) It is understood that for purposes of paragraph 5 a) of Article 26 (Limitation on Benefits) a person will be considered to be engaged in "supervision and administration" activities, only if it engages in a number of the kinds of activities listed below. For example, a person will be considered a headquarters company if it performs a significant number of the following functions for the group: group financing (which cannot be its principal function), pricing, marketing, internal auditing, internal communications and management. A simple comparison of the amount of gross income that the headquarters company derives from its different activities cannot be used alone to determine whether group financing is, or is not, the company's principal function. The above-mentioned functions are intended to be suggestive of the types of activities in which a headquarters company will be expected to engage; it is not intended to be exhaustive.

Furthermore, it is understood that in determining if a substantial portion of the overall supervision and administration of the group is provided by the headquarters company, the activities it performs as a headquarters company for the group it supervises must be

substantial in comparison to the same activities for the same group performed within the multinational.

For example, a Japanese corporation establishes a subsidiary in the Netherlands to function as a headquarters company for its European and North American operations. The Japanese corporation also has two other subsidiaries functioning as headquarter companies; one for the African operations and one for the Asian operations. The Dutch headquarters company is the parent company for the subsidiaries through which the European and North American operations are carried on. The Dutch headquarters company supervises the bulk of the pricing, marketing, internal auditing, internal communications and management for its group. Although the Japanese overall parent sets the guidelines for all of its subsidiaries in defining the world-wide group policies with respect to each of these activities, and assures that these guidelines are carried out within each of the regional groups, it is the Dutch headquarters company that monitors and controls the way in which these policies are carried out within the group of companies that it supervises. The capital and payroll devoted by the Japanese parent to these activities relating to the group of companies the Dutch headquarter company supervises is small, relative to the capital and payroll devoted to these activities by the Dutch headquarters company. Moreover, neither the other two headquarter companies, nor any other related company besides the Japanese parent company, perform any of the above-mentioned headquarter activities with respect to the group of companies that the Dutch headquarter company supervises. In the above case the Dutch headquarters company will be considered to provide a substantial portion of the overall supervision and administration of the group it supervises.

XXIV. In reference to paragraph 7 of Article 26 (Limitation on Benefits)

(a) It is understood that a company resident in one of the States will be granted under paragraph 7 of Article 26 (Limitation on Benefits) all the benefits of the Convention otherwise accorded to residents of a State with respect to the income it derives from the other State if it satisfies any other specified conditions for the obtaining of such benefits and if:

(1) shares representing more than 30 percent of the aggregate vote and value of all of its shares are owned, directly or indirectly, by persons who are qualified persons by reason of subparagraphs a), b), clause i) of subparagraph c), or subparagraphs d) or e) of paragraph 2 of Article 26;

(2) shares representing more than 70 percent of the aggregate vote and value of all its shares (and at least 50 percent of any disproportionate class of shares) are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries within the meaning of subparagraph 8 f); and

less than 50 percent of the company's gross income for the taxable year in which the item of income arises is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments that are deductible for the purposes of

the taxes covered by the Convention in the State of which the company is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States).

(b) The competent authorities agree to use reasonable efforts to make a determination pursuant to paragraph 7 within six months of receiving from the taxpayer all necessary information. Further, the competent authorities of both States will meet semi-annually to discuss the status of all cases in which a determination has been requested.

XXV. In reference to subparagraph 2 c) and subparagraph 8 a) ii) of Article 26 (Limitation on Benefits)

A company that is listed on the Paris or Brussels stock exchanges that, together with the Amsterdam Stock Exchange, constitute Euronext, will be treated as satisfying the listing requirement of paragraph 2(c) so long as securities regulators in the Netherlands continue to supervise the functioning of the portion of the exchange that is located in the Netherlands. If the functioning or supervision of Euronext change substantially, the competent authority of the Netherlands will notify the competent authority of the United States and the two competent authorities will consider whether such treatment remains appropriate and whether adjustments should be made to achieve the purpose of this paragraph.

XXVI. In reference to subparagraphs 8 d) ii) and 8 e) iii) of Article 26 (Limitation on Benefits)

(a) In making the determination in subparagraph 8 d) ii), it is understood that the determination is based on an assessment of the decision making activities of all of the executive officers and senior management employees who are members of the Executive Board or the Board of Directors of the company, as the case may be, unless such persons merely provide formal approval of decisions that are in fact made by others. If the executive officers of direct or indirect subsidiaries of the company perform the policy-making functions that are normally the responsibility of the Executive Board or Board of Directors of a corporate group, such as those described in subparagraph 8 e) iii), they will be deemed to be members of the Executive Board or the Board of Directors of the company for these purposes. If there are special voting or other arrangements that indicate that the board members (including persons described in the preceding sentence) do not in fact share equally in decision making, those persons will be considered only to the extent that they are responsible for making the decisions described in subparagraph 8 e) iii).

(b) If a company that is a resident of the Netherlands and is regularly traded on one or more recognized stock exchanges is a parent company for an integrated group of companies that includes another parent company that is also regularly traded on one or more recognized stock exchanges and that other parent company is a resident of a state in

the primary economic zone of the Netherlands that has an income tax treaty with the United States that provides for the same or lower rates of withholding with respect to dividends, branch tax, interest and royalties as are provided in Articles 10 (Dividends), 11 (Branch Tax), 12 (Interest) and 13 (Royalties) of the Convention in comparable circumstances, then the first-referenced company will be treated as satisfying the requirements of subparagraph 8) e) iii) with respect to the location of staffs if the staffs conduct more of the activities described therein in the Netherlands and that other state than in any state other than the Netherlands and that other state. For this purpose, an "integrated group of companies" is a group of companies that includes the two parent companies described in the preceding sentence and chains of subsidiaries in which the parent companies have joint economic ownership.

XXVII. In reference to subparagraph 8 h) of Article 26 (Limitation on Benefits)

It is understood that, if a class of shares was not listed on a recognized stock exchange in the twelve months referred to in the subparagraph, that class of shares will be treated as regularly traded only if that class meets the aggregate trading requirements of the subparagraph for the taxable year in which the income arises.

XXVIII. In reference to paragraph 7 of Article 26 (Limitation on Benefits)

(a) For purposes of paragraph 7 of Article 26 (Limitation on Benefits), in determining whether the establishment, acquisition, or maintenance of a corporation resident of one of the States has or had as one of its principal purposes the obtaining of benefits under this Convention, the competent authority of the State in which the income in question arises may consider the following factors (among others):

(1) The date of incorporation of the corporation in relation to the date that this Convention entered into force;

(2) The continuity of the historical business and ownership of the corporation;

(3) The business reasons for the corporation residing in its State of residence;

(4) The extent to which the corporation is claiming special tax benefits in its country of residence;

(5) The extent to which the corporation's business activity in the other State is dependent on the capital, assets, or personnel of the corporation in its State of residence; and

(6) The extent to which the corporation would be entitled to treaty benefits comparable to those afforded by this Convention if it had been incorporated in the country of residence of the majority of its shareholders.

(b) It is understood that a company resident of one of the States will be granted the treaty benefits under paragraph 7 of Article 26 (Limitation on Benefits) with respect to the income it derives from the other State, if such company:

(1) Holds stocks and securities the income from which is not predominantly from sources in the other State;

(2) Has widely dispersed ownership; and

(3) Employs in its state of residence a substantial staff actively engaged in trades of stocks and securities owned by the company.

It is further understood that paragraph 7 of Article 26 will not apply if any of the above-mentioned factors is absent.

(c) It is understood that in applying paragraph 7 of Article 26 (Limitation on Benefits), the legal requirements for the facilitation of the free flow of capital and persons within the European Communities, together with the differing internal income tax systems, tax incentive regimes, and existing tax treaty policies among member states of the European Communities, will be considered. Under such paragraph, the competent authority is instructed to consider as its guideline whether the establishment, acquisition or maintenance of a company or the conduct of its operations has or had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority may, therefore, determine under a given set of facts, that a change in circumstances that would cause a company to cease to qualify for treaty benefits under paragraphs 2 and 3 of Article 26 need not necessarily result in a denial of benefits. Such changed circumstances may include a change in the state of residence of a major shareholder of a company, the sale of part of the stock of a Netherlands company to a person resident in another member state of the European Communities, or an expansion of a company's activities in other member states of the European Communities, all under ordinary business conditions. The competent authority will consider these changed circumstances (in addition to other relevant factors normally considered under paragraph 7 of Article 26) in determining whether such a company will remain qualified for treaty benefits with respect to income received from United States sources. If these changed circumstances are not attributable to tax avoidance motives, this also will be considered by the competent authority to be a factor weighing in favor of continued qualification under paragraph 7 of Article 26.

(d) When a corporation resident in one of the States that is entitled to benefits under Article 26 (Limitation on Benefits) acquires a controlling interest in a corporation resident in a third state that in turn owns a controlling interest in a second corporation resident in the first-mentioned State, that second corporation may not be entitled to the benefits of the Convention due to the provisions of subparagraph 2 c) ii) of Article 26 with respect to income derived from sources within the other State. It is understood that in these circumstances the competent authority of the other State, in considering a request for benefits under the Convention under paragraph 7 of Article 26, will consider

favorably a plan of reorganization submitted by the second corporation resident in the first-mentioned State, if such plan would result in the second corporation being entitled to the benefits of the Convention within a reasonable transition period (determined without regard to paragraph 7 of Article 26).

XXIX. In reference to paragraph 8 h) of Article 26 (Limitation on Benefits)

In order to meet the "regularly traded" test under subparagraph 8 h) of Article 26 (Limitation on Benefits), a person claiming benefits under the Convention need not prove that it has not engaged in, but may need to rebut evidence that it has engaged in, a pattern of trades on a recognized stock exchange in order to meet these tests.

XXX. In reference to Article 27 (Offshore Activities)

It is understood that transport of supplies or personnel between one of the States and a location where activities are carried on off-shore in that State or between such locations is to be considered as transport between places in that State.

XXXI. In reference to paragraph 5 of Article 29 (Mutual Agreement Procedure)

(a) It is understood that the States will in any case exchange diplomatic notes as provided in paragraph 5 of Article 29 (Mutual Agreement Procedure), when the experience within the European Communities with regard to the application of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed on 23 July 1990, or the application of paragraph 5 of Article 25 of the tax convention between the United States of America and the Federal Republic of Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes, signed on 29 August 1989, has proven to be satisfactory to the competent authorities of both States. After a period of three years after the entry into force of the Convention, the competent authorities shall consult in order to determine whether the conditions for the exchange of diplomatic notes have been fulfilled.

(b) If the competent authorities of both States agree to submit a disagreement regarding the interpretation or application of this Convention in a specific case to arbitration according to paragraph 5 of Article 29, the following procedures will apply:

(1) If, in applying paragraphs 1 to 4 of Article 29, the competent authorities fail to reach an agreement within two years of the date on which the case was submitted to one of the competent authorities, they may agree to invoke arbitration in a specific case, but only after fully exhausting the procedures available under paragraphs 1 to 4 of Article 29. The competent authorities will not generally accede to arbitration with respect to matters concerning the tax policy or domestic law of either State.

(2) The competent authorities shall establish an arbitration board for each specific case in the following manner:

(A) An arbitration board shall consist of not fewer than three members. Each competent authority shall appoint the same number of members, and these members shall agree on the appointment of the other member(s).

(B) The other member(s) of the arbitration board shall be from either State or from another OECD member country. The competent authorities may issue further instructions regarding the criteria for selecting the other member(s) of the arbitration board.

(C) Arbitration board member(s) (and their staffs) upon their appointment must agree in writing to abide by and be subject to the applicable confidentiality and disclosure provisions of both States and the Convention. In case those provisions conflict, the most restrictive condition will apply.

(3) The competent authorities may agree on and instruct the arbitration board regarding specific rules of procedure, such as appointment of a chairman, procedures for reaching a decision, establishment of time limits, etc. Otherwise, the arbitration board shall establish its own rules of procedure consistent with generally accepted principles of equity.

(4) Taxpayers and/or their representatives shall be afforded the opportunity to present their views to the arbitration board.

(5) The arbitration board shall decide each specific case on the basis of the Convention, giving due consideration to the domestic laws of the States and the principles of international law. The arbitration board will provide to the competent authorities an explanation of its decision. The decision of the arbitration board shall be binding on both States and the taxpayer(s) with respect to that case. While the decision of the arbitration board shall not have presidential effect, it is expected that such decisions ordinarily will be taken into account in subsequent competent authority cases involving the same taxpayer(s), the same issue(s), and substantially similar facts, and may also be taken into account in other cases where appropriate.

(6) Costs for the arbitration procedure will be borne in the following manner:

(A) Each State shall bear the cost of remuneration for the member(s) appointed by it, as well as for its representation in the proceedings before the arbitration board;

(B) The cost of remuneration for the other member(s) and all other costs of the arbitration board shall be shared equally between the States; and

(C) The arbitration board may decide on a different allocation of costs.

However, if it deems appropriate in a specific case, in view of the nature of the case and the roles of the parties, the competent authority of one of the States may require the taxpayer(s) to agree to bear that State's share of the costs as a prerequisite for arbitration.

(7) The competent authorities may agree to modify or supplement these procedures; however, they shall continue to be bound by the general principles established herein.

XXXII. In reference to Article 30 (Exchange of Information and Administrative Assistance)

If a United States "reporting corporation" (as defined for purposes of section 6038A of the United States Internal Revenue Code) that is a United States resident, or a United States permanent establishment of a United States "reporting corporation" that is not a United States resident, has neither possession of nor access to records that may be relevant to the United States income tax treatment of any transaction between it and a foreign "related party" (as defined in section 6038A of the United States Internal Revenue Code), and such records are under the control of a Netherlands resident and are maintained outside the United States, then the United States shall request such records from the Netherlands through an exchange of information under Article 30 (Exchange of Information and Administrative Assistance) before issuing a summons for such records to the United States "reporting corporation", provided that under all the circumstances presented, the records will be obtainable through the request on a timely and efficient basis. For purposes of this paragraph, records will be considered to be available on a timely and efficient basis if they can be obtained within 180 days of the request or such other period agreed upon in mutual agreement between the competent authorities, except where the statute of limitations may expire in a shorter period. Similar principles shall apply with respect to the application of section 6038C.

XXXIII. In reference to Article 30 (Exchange of Information and Administrative Assistance)

Pursuant to paragraph 2 thereof, which provides that the competent authorities shall endeavor to provide information in the form of depositions of witnesses and authenticated copies of unedited original documents, it is understood that the competent authorities of the States will work together to develop mutual procedures that reconcile differences in internal domestic laws and procedures with the aim of ensuring that information is provided in a form that facilitates its use in judicial proceedings in the requesting State.

XXXIV. In reference to paragraph 1 of Article 30 (Exchange of Information and Administrative Assistance)

It is understood that persons concerned with the "administration" of taxes, as that term is used in paragraph 1 of Article 30 (Exchange of Information and Administrative Assistance) include, in the United States, the "tax-writing committees of Congress" and the "General Accounting Office". Information exchanged under the Convention that is otherwise confidential under the Convention may be received under the same requirement of confidentiality by these bodies and may be used only in the performance of their role of overseeing the administration of United States tax laws.

Congress's and the "General Accounting Office's" role in overseeing the administrative of United States tax law is understood to be limited to ensuring that the administration of the tax law by the executive branch is honest, efficient, and consistent with legislative intent.

XXXV. In reference to Article 31 (Assistance and Support in Collection)

It is understood that in applying Article 31 (Assistance and Support in Collection) the following shall be taken into account:

(1) The requested State shall not be obliged to accede to the request of the applicant State:

(A) If the applicant State has not pursued all appropriate collection action in its own jurisdiction;

(B) In those cases where the administrative burden for the requested State is disproportionate to the benefit to be derived by the applicant State.

(2) The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

(A) An official copy of the instrument permitting enforcement in the applicant State;

(B) Where appropriate, certified copies of any other document required for recovery;

(C) A certification by the competent authority of the applicant State that, under the laws of that State, the revenue claim has been finally determined.

For the purposes of this Article, a revenue claim is finally determined when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.

(3) A revenue claim of the applicant State that has been finally determined may be accepted for collection by the competent authority of the requested State and, subject to the provisions of paragraph 7 below, if accepted shall be collected by the requested State as though such revenue claim were the requested State's own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State's own taxes.

(4) Where an application for collection of a revenue claim in respect of a taxpayer is accepted:

(A) By the United States, the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received; and

(B) By the Netherlands, the revenue claim shall be treated by the Netherlands as an amount payable under appropriate Netherlands law, the collection of which is not subject to any restriction.

(5) Nothing in this Article shall be construed as creating or providing any rights of administrative or judicial review of applicant State's finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either State. If, at any time pending execution of a request for assistance under this Article, the applicant State loses the right under its internal law to collect the revenue claim, the competent authority of the applicant State shall promptly withdraw the request for assistance in collection.

(6) Subject to this paragraph, amounts collected by the requested State pursuant to this Article shall be forwarded to the competent authority of the applicant State. Unless the competent authorities of the States otherwise agree, the ordinary costs incurred in providing collection assistance shall be borne by the requested State and any extraordinary costs so incurred shall be borne by the applicant State.

(7) The requested State may allow deferral of payment or payment by installments, if its laws or administrative practice permit it to do so in similar circumstances, but it shall first inform the applicant State. Any interest received by the requested State as a result of the allowance of a deferral of payment or payment by installments will be transferred to the competent authority of the applicant State.

(8) A revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.

(9) The competent authorities may under this Article grant assistance in collecting any tax deferred by operation of paragraph 8 of Article 14 (Capital Gains).

(10) The competent authorities of the States shall agree upon the mode of application of this Article. The competent authorities of the States may further agree to modify or supplement these procedures, however, they shall continue to be bound by the general principles established herein.

XXXVI. In reference to paragraph 2 of Article 32 (Limitations of Articles 30 and 31)

It is understood that the competent authorities of each State shall use all reasonable efforts to obtain and provide information respecting interests in a person in response to a request from the other State. Paragraph 2 of Article 32 (Limitations of Articles 30 and 31) does not, however, create an obligation on the competent authorities of either State to obtain and provide information respecting interests in a person unless such information can be obtained without giving rise to disproportionate difficulties.

XXXVII. In reference to paragraph 2 of Article 35 (Exempt Pension Trusts)

For the purpose of paragraph 2 of Article 35 (Exempt Pension Trusts), a person is considered to be a related person if more than 80% of the vote or value of any class of the shares is owned by the person deriving the income.

XXXVIII. In General

It is understood that the two Governments shall consult together at regular intervals regarding the terms, operation and application of the Convention to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude further Protocols to amend the Convention. The first such consultation shall take place no later than December 31st in the fifth year following the date on which the Protocol enters into force in accordance with the provisions of Article 10 of the Protocol. Further consultations shall take place thereafter at intervals of no more than five years.

Notwithstanding the preceding paragraph, either Government may at any time request consultations with the other Government on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution.

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